

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. 04-35212 DDO

In Re:

Chapter 7

David Adkins,

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor David Adkins; his attorney Barbara J. May; United States Trustee; and all other entities specified in Local Rule 1204 (a):

1. General Motors Acceptance Corporation, (“GMAC”), a secured creditor in this Chapter 7 proceeding, by and through duly authorized and undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing.

2. The court will hold a hearing on this motion on **October 25, 2004, at 9:30 a.m.**, before the Honorable Dennis D. O'Brien, United States Bankruptcy Judge, in Courtroom No. 228a, 200 Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than October 20, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail no later than October 14, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays).

UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 case was filed on September 7, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Bankruptcy Rule 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 5005-4, 9006-1, 9013-1 and 9017-1. GMAC requests relief from the automatic stay under § 362 of the Bankruptcy Code to foreclose its security interest in certain personal property of the debtor as defined below.

6. On April 15, 2004, the debtor, David Adkins, executed a promissory note and security agreement in favor of GMAC, in the original principal amount of \$48,550.80, plus interest thereon at the stated rate, payable according to the terms and conditions therein, a copy of which is attached hereto as **Exhibit "A"**. Security for the promissory note consists of a security interest in a motor vehicle, a 2004 Chevrolet Suburban, VIN # 3GNFK16Z64G207484. Proof of perfection of the security interest of GMAC is attached hereto as **Exhibit "B"**.

7. The promissory note is in default for failure to make payments when due since July 2004, a delinquency in the approximate amount of \$2,427.54. As of September 7, 2004, the amount due was a payoff balance of \$46,932.44. On information and belief, the value of the vehicle is \$46,650.00 and the debtor has no equity in the vehicle.

8. The loan is in default for failure to make payments when due. GMAC seeks relief from the automatic stay to foreclose its personal property security interest in the vehicle.

9. Pursuant to 11 U.S.C. § 362(d)(1), a creditor may be granted relief from the automatic stay for cause, including lack of adequate protection. GMAC believes that cause exists to grant it relief from the automatic stay to foreclose its personal property security interest, for the following reasons:

a. GMAC has not been offered and is not being provided with adequate protection for its interest in the vehicle;

b. The vehicle subject to the security interest of GMAC continues to depreciate and decline in value; and

c. The debtor has stopped making payments to GMAC.

10. Pursuant to 11 U.S.C. § 362(d)(2), a creditor may be granted relief from the automatic stay, if there is no equity in the property which is the subject of the motion, and property is not necessary for an effective reorganization. Here, the debtor has no equity in the vehicle that is the subject of this motion, and the vehicle is not necessary for an effective reorganization in this Chapter 7 proceeding.

11. If any testimony is necessary on any of the facts relative to this motion, testimony will be given by C. Kost, or some other representative of the Movant, General Motors Acceptance Corporation.

WHEREFORE, GMAC requests entry of an Order granting the relief from the automatic stay of 11 U.S.C. § 362, to allow it to foreclose its personal property security interest described above, and for such other and further relief as the court deems just and equitable under the circumstances.

Dated: October 6, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn
Marilyn J. Washburn, #0324140
7700 Bonhomme Ave., 7th Floor
St. Louis, MO 63105
(314) 727-0101
FAX (314) 727-1086
Attorneys for GMAC

CK

RETAIL INSTALLMENT SALE CONTRACT
GMAC FLEXIBLE FINANCE PLAN

APR 13 2004

Buyer (and Co-Buyer, if any) may buy the vehicle described below for cash or on credit. By signing this contract, you agree to buy the vehicle on credit under the terms set forth on the front and back of this contract. You agree to pay the Creditor the Amount Financed and Finance Charge according to the payment schedule shown below. The Finance Charge is figured on a daily basis at the Annual Percentage Rate on the unpaid balance of the Amount Financed. Description of Vehicle: You agree to buy and the Creditor agrees to sell the following vehicle:	Dealer Number 1220 MOURNING DOVE CT EAGAN, MN 55123 DAXOTA	Contract Number JEFF BELZER'S TODD (MAYNARD) AND HIGHWAY 58 AND CEDAR AVENUE LAKEVILLE, MN 55046
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New or Used	Year	Make and Model	Body Type	Vehicle Identification No.	Use for Which Purchased
NEW	2004	CHEVROLET SUBURBAN	SUB/XL/EXT	3GNFK16264G287484	Personal <input checked="" type="checkbox"/> Business <input type="checkbox"/> Agriculture <input type="checkbox"/>

If Used—Describe body and major items of equipment sold:

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid when you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of \$1,425.25.
9.99%	\$9.99	\$48,858.56	\$49,558.88	\$58,876.88
Your Payment Schedule Will Be:				
Number of Payments	Amount of Payments	When Payments Are Due	Or as Follows:	
60	\$829.16	Monthly beginning 5/30/04		

Prepayment. If you pay off all your debt early you will not have to pay a penalty.
Security Interest. You are giving a security interest in the vehicle being purchased.
Additional Information. See the other side of this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date, and security interest.

ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (including any accessories, services, and taxes)	\$48,423.75 (1)
2 Total Downpayment—Net Trade-In \$1,900—Cash Downpayment \$1,525.25	\$3,425.25 (2)
3 Unpaid Balance of Cash Price (1 minus 2)	\$46,998.50 (3)
4 Other Charges including Amount Paid to Others on Your Behalf (Seller may be keeping part of these amounts):	
A. Sales Tax (including any applicable, services, and taxes)	\$1,425.25 (4)
B. Cost of Optional Mechanical Repair Insurance Paid to the Insurance Company Named Below—Covering Certain Mechanical Repairs	N/A
C. Cost of Optional Credit Insurance Paid to the Insurance Company or Companies Named Below: Monthly Accident and Health \$	N/A
D. Official Fees Paid to Government Agencies	\$1,812.25 (5)
E. Taxes Not Included in Cash Price	\$19.98
F. Government License and/or Registration Fees (Amount: LIC, \$19.98)	N/A
G. Government Certificate of Title Fees	N/A
H. Other Charges (Seller must identify who will receive payment and describe charges)	\$59.98
Total Other Charges and Amounts Paid to Others on Your Behalf	\$1,812.25 (6)
5 Amount Financed—Unpaid Balance (3 + 4)	\$48,540.73 (5)

Insurance. If any insurance is checked below, the policies or certificates issued by the Companies named will describe the terms and conditions. Required Physical Damage Insurance. Physical damage insurance is required, but you (Optional Mechanical Repair Insurance. The cost of this insurance is shown in 4B of the Itemization above.) may obtain it from anyone you want who is acceptable to the Creditor. The cost of this insurance is shown in 4A of the Itemization above.

Insurance Company: N/A

Term: 36 months or 36,000 miles, whichever occurs first.

Term: ☐ 36 months or 36,000 miles, whichever occurs first. ☐ 24 months or 24,000 miles, whichever occurs first.

Coverage: ☐ Comprehensive including Fire, Theft and Combined Additional Coverage. ☐ Deductible Comprehensive including Fire, Theft and Combined Additional Coverage.

Coverage: ☐ Fire, Theft and Combined Additional Coverage. ☐ Rental Reimbursement. ☐ Oil Field Equipment.

Optional, if desired: ☐ Towing and Labor costs. ☐ Rental Reimbursement.

Optional Credit Insurance. Credit life insurance and credit disability insurance are not required to obtain credit and will not be provided unless you sign for them and agree to pay the additional cost. If you want this insurance, check the insurance desired and sign below. If you have chosen this insurance, the cost is shown in 4C of the Itemization above. Credit life insurance pays only the amount you would owe if you paid all your payments on time. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

Check the insurance desired: ☐ Life (Buyer) ☐ Co-Buyer ☐ Both ☐ Disability, Accident and Health (Buyer Only)

(Name of Insurer) _____ (Home Office Address) _____

Under policy of designated insurer, maximum amount of insurance under this contract is \$ N/A, and the total amount of insurance under this and any other installment contract of the Buyer is limited to \$ N/A.

Buyer Signature _____ Date _____ Co-Buyer Signature _____ Date _____

THE INSURANCE, IF ANY, REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS.

See the other side of this contract for other important agreements, including your agreement to give the Creditor a security interest in the vehicle and proceeds.

IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

APRIL 15TH, 2004

You signed this contract and received a copy of the contract on the date on the back of this contract.

Buyer Signature _____ Co-Buyer Signature _____

Co-Signer. The Co-Signer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have a security interest in the vehicle and consents to the security interest.

Blumberg No. 5119

EXHIBIT

A

DAKOTA

HIGHWAY 55 AND CEDAR AVENUE LAKEVILLE, MN 55044

You, the Buyer (and Co-Buyer, if any), may buy the vehicle described below for cash or on credit. By signing this contract, you agree to buy the vehicle on credit under the agreement on the front and back of this contract. You agree to pay the Creditor the Amount Financed and Finance Charge according to the payment schedule shown below. The Finance Charge is figured on a daily basis at the Annual Percentage Rate on the unpaid balance of the Amount Financed. Description of Vehicle, You agree to buy and the Creditor agrees to sell the following vehicle:

New or Used	Year	Make and Model	Body Type	Vehicle Identification No.	Use for Which Purchased
NEW	2004	CHEVROLET SUBURBAN	SUB/XT/EXT	3GNFK16T64G207484	<input checked="" type="checkbox"/> Personal <input type="checkbox"/> Business

If truck-Describe body and major items of equipment sold:

FEDERAL TRUTH-IN-LENDING DISCLOSURE

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
8.99 %	\$ 8.99	\$ 48,558.88	\$ 49,558.88	\$ 58,876.88

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
60	\$829.15	Monthly beginning 5/30/04

Or as Follows:

Prepayment. If you pay off all your debt early you will not have to pay a penalty.
Security Interest. You are giving a security interest in the vehicle being purchased.
Additional Information. See the other side of this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date, and security interest.

ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (including any accessories, options, and taxes)	\$ 48,423.75 (1)
2 Total Downpayment= Net Trade-In \$	\$ 1,500.00
3 Other (License, Sales Tax, etc.)	\$ 1,435.28 (3)
4 Total	\$ 46,938.55 (4)

5 Unpaid Balance of Cash Price (1 minus 2)

6 Other Charges including Amounts Paid to Others on Your Behalf (Seller may be keeping part of those amounts):

A Title and License Fees	\$ 18.00
B Cost of Optional Mechanical Repair Insurance Paid to the Insurance Company Named Below-Covering Certain Mechanical Repairs	\$ N/A
C Cost of Optional Credit Insurance Paid to the Insurance Company or Companies Named Below	\$ N/A
D Credit Fees Paid to Government Agencies	\$ N/A
E Taxes Not Included in Cash Price	\$ 1,435.28
F Government License and/or Registration Fees (Name)	\$ 519.88
G Government Certificate of Title Fees	\$ N/A
H Other Charges (Buyer must identify who will receive payment and describe purpose)	\$ 58.88
Total Other Charges and Amounts Paid to Others on Your Behalf	\$ 1,612.25 (4)
Amount Financed=Unpaid Balance (2 + 4)	\$ 48,558.88 (5)

Insurance. If any insurance is checked below, the policies or certificates issued by the Companies named will describe the terms and conditions. Required Physical Damage Insurance. Physical damage insurance is required, but you may obtain it from anyone you want who is acceptable to the Creditor. The cost of this insurance is shown in 4A of the Itemization above.

Insurance Company _____ Term _____ months

☐ Deductible Collision and other:
☐ Full Comprehensive including Fire, Theft and Combined Additional Coverage
☐ Deductible Comprehensive including Fire, Theft and Combined Additional Coverage

Coverage:
☐ Fire, Theft and Combined Additional Coverage
☐ Towing and Labor Costs ☐ Rental Reimbursement ☐ On Radio Equipment

Optional Credit Insurance. Credit life insurance and credit disability insurance are not required to obtain credit and will not be provided unless you sign for them and agree to pay the additional cost. If you want the insurance, check the insurance desired and sign below. If you have chosen the insurance, the cost is shown in 4C of the Itemization above. Credit life insurance pays only the amount you would owe if you paid all your payments on time. Credit disability insurance does not cover any increase in your payments or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

Check the insurance desired: ☐ Life (Buyer) ☐ Life (Buyer/Co-Buyer) ☐ Both ☐ Disability, Accident and Health (Buyer Only)

(Name of Insurer) _____ (Home Office Address) _____

Under policy of designated insurer, maximum amount of insurance under this contract is \$ N/A and the total amount of insurance under this and any other insurance contract of the Buyer is limited to \$ N/A.

Buyer Signature _____ Date _____ Co-Buyer Signature _____ Date _____

THE INSURANCE, IF ANY, REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS.

See the other side of this contract for other important agreements, including your agreement to give the Creditor a security interest in insurance premiums and proceeds.

IMPORTANT! THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

Yes, I signed this contract and I agree to the terms (Print name as Buyer) _____ APRIL 15th, 2004

Buyer Signature _____ Co-Buyer Signature _____

Co-Buyer Signature _____

Other owner Signature _____

Creditor Signature _____

If Seller obtained this vehicle from General Motors Corporation (GM) on an installment credit plan, Seller agrees to interest in this contract to GM under the terms of the GM Installment Sales Finance Plan-Terms of Substitution and Assignment Agreement. Otherwise, Seller assigns its interest in this contract to General Motors Acceptance Corporation (GMAC) under the terms of the GMAC Retail Plan agreement.

Assigned with recourse _____ Assigned without recourse or with limited recourse _____

Seller By _____ This _____

By _____ This _____

By _____ This _____

By _____ This _____

By _____ This _____

By _____ This _____

04 APR 19 AM 9:23

OTHER IMPORTANT AGREEMENTS

Finance Charge. The Finance Charge is figured on a daily basis at the Annual Percentage Rate on the unpaid balance of the Amount Financed. The Creditor will apply each payment first to the earned and unpaid part of the Finance Charge, and then to the unpaid balance of the Amount Financed.

Financed. Late Payments and Early Payments. The amounts shown on the front of this contract for the Finance Charge, Total of Payments and the Total Sale Price are based on the assumption that you will make every payment on time. If you pay more than the scheduled payment, the Finance Charge will be less. If you pay less than the scheduled payment, the Finance Charge will be more. If you pay more or less than the scheduled payment, the Total of Payments and the Total Sale Price will be different. If you pay more than the scheduled payment, the Finance Charge will be less. If you pay less than the scheduled payment, the Finance Charge will be more. If you pay more or less than the scheduled payment, the Total of Payments and the Total Sale Price will be different.

[illegible][illegible]

Prepayment. You may prepay the unpaid balance at the Amount Financed in full or in part at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of payment.

Required Physical Damage Insurance. You agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. At any time during the term of this contract, if you do not have contract, as any time during the term of this contract, if you do not have the physical damage insurance which covers both the interest of you and the Creditor in the vehicle, then the Creditor may buy it for you. If the Creditor does not buy physical damage insurance which covers both interests in the vehicle, it may, if it decides, buy insurance which covers only the Creditor's interest.

The Creditor is under no obligation to buy any insurance, but may do so if you know or desire. If the Creditor buys either of these coverages, it will let you know the premium type it is and the charge you must pay. The charge will be the premium plus the insurance and a finance charge at the Annual Percentage rate shown on the front of this contract. You agree to pay the charge in equal installments along with the payments shown on the Payment schedule.

If the vehicle is lost or damaged, you agree that the Creditor can use any

Optional Insurance or Service Contracts. This contract may contain charges for optional insurance or service contracts. If the vehicle is repossessed, you agree that the Creditor may claim benefits under these policies and withhold them to obtain refunds for unearned charges.

Insurance or Service Contract Charges Returned to Creditor. If any charge for required insurance is returned to the Creditor, it may be credited to your account or used to buy similar insurance or insurance which covers only the Creditor's interest in the vehicle. Any refund on optional insurance or service contracts obtained by the Creditor will be credited to your account. You will be notified of what is done.

You will be notified or must be notified.

Required Payment in Full before the Scheduled Date. If you fail to pay any payment when due; if a proceeding in bankruptcy, receivership or insolvency is started by you or against you or your property; or if you break any of the agreements in this contract (defaults), the Creditor can demand that you pay all you owe on this contract at once (not just past due payments). The amount you owe will be the unpaid balance of the Amount Financed plus the earned and unpaid part of the Finance Charge, and any amounts due because you did not keep certain promises.

Repossession of this Vehicle for Failure to Pay. Repossession means that, if you fail to pay according to the payment schedule or if you break any of the agreements in this contract (installment), the Creditor can take the vehicle from you. To take the vehicle the Creditor can enter your property, or the property where it is stored, as long as it is done peacefully. If there is any personal property in the vehicle, such as clothing, the Creditor can store it for you. Any accessories, equipment or replacement parts will remain with the vehicle.

[illegible]

Sale of the Repossessed Vehicle. The Creditor will send you a written notice of sale at least 10 days before selling the vehicle. If you do not redeem the vehicle by the date on the notice, the Creditor can sell it. The Creditor will use the net proceeds of the sale to pay all or part of your debt.

The net proceeds of sale will be figured this way: Any charges for taking and storing the vehicle, cleaning and advertising etc., and any attorney fees and costs will be deducted from the selling price.

If you owe the Creditor less than the net proceeds of sale, the Creditor will pay you the difference, unless required to pay it to someone else. For example, the Creditor may be required to pay a lender who has given you a loan secured with a security interest in the vehicle.

If you owe more than the net proceeds of sale, you will pay the Creditor the difference between the net proceeds of sale and what you owe when the Creditor asks for it. If you do not pay this amount when asked, you may also be charged interest at the highest lawful rate until you do pay all you owe to the Creditor.

Collection Costs. If the Creditor hires an attorney to collect what you owe, you will pay the attorney's reasonable fee and any court costs. The attorney's fee will not exceed 16% of the amount that you owe.

Delay in Enforcing Rights and Changes of this Contract. The Creditor can delay or refrain from enforcing any of its rights under this contract without losing them. For example, the Creditor can extend the time for making some payments without extending others. Any change in terms of this contract must be in writing and signed by the Creditor. We and changes are binding. If any part of this contract is not valid, all other parts will remain enforceable.

WARRANTIES SELLER DISCLAIMS. You understand that the Seller is not offering any warranties and that there are no implied warranties of merchantability, of fitness for a particular purpose, or any other warranties, express or implied by the Seller, covering the vehicle unless the Seller extends a written warranty or service contract within 30 days from the date of this contract.

The foregoing disclaimer of implied warranties does not apply if this contract covers a new vehicle that was obtained primarily for personal use unless you were informed in writing prior to signing this contract that the vehicle was sold on an "as is" or "with all faults" basis and that you bear the entire risk as to the quality and performance of the vehicle.

An implied warranty of merchantability generally means that the vehicle is fit for the ordinary purpose for which such vehicles are generally used. A warranty of fitness for a particular purpose is a warranty that may arise when the Seller has reason to know the particular purpose for which you require the vehicle and you rely on the Seller's skill or judgment to furnish a suitable vehicle.

This provision does not affect any warranties covering the vehicle which may be provided by the vehicle manufacturer.

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form may sometimes be missing in the contract of sale.

Notwithstanding to whomsoever the vehicle is sold, Seller shall remain obligated to pay the balance of the vehicle's purchase price to GM. Seller's obligation to pay the balance of the vehicle's purchase price to GM shall not be affected by any sale, transfer, assignment, or other disposition of the vehicle or any part thereof. Seller shall remain obligated to pay the balance of the vehicle's purchase price to GM until the vehicle is sold to a third party who is not a related party of Seller. Seller shall remain obligated to pay the balance of the vehicle's purchase price to GM until the vehicle is sold to a third party who is not a related party of Seller.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
 DRIVER & VEHICLE SERVICES DIVISION
 445 MINNESOTA ST., ST. PAUL, MN 55101
 CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

ADKINS DAVID WILLIAM
 1220 MOURNING DOVE CT
 EAGAN MN 55123

First Class
 U.S. Postage
 PAID
 Permit No. 171
 St. Paul, MN

MDD332

1ST SECURED PARTY

Year	04	Make	CHEV	Model	4WK15	Title NR	21750S029
VIN	3GNFK16Z646207484			Security Date	04/15/04	Product	NO

LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse
 side of this form for removing this lien

GMAC
 PO BOX 8122
 COCKEYSVILLE MD 21030-8122

Blumberg No. 5119

EXHIBIT

B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Case

David Adkins,

Bky. No. 04-35212-DDO

Debtor(s).

Affidavit

I, C. Kost, of General Motors Acceptance Corporation, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief.

1. General Motors Acceptance Corporation has a security interest in the following (the "Collateral"):

N04 CHEVK1500 VIN 3GNFK16Z64G207484.

2. \$46,932.44 is the outstanding balance under the contract.
3. \$2,474.54 is the amount of the existing delinquency under the contract.
4. \$46,650.00 is the fair market value of the Collateral.
5. Yes appropriate insurance has been verified.

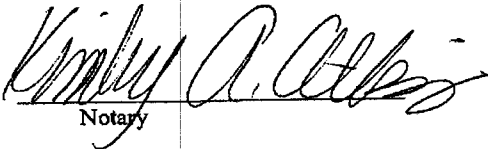
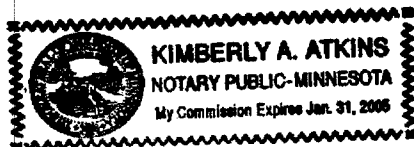
Further your affiant sayeth not.

Dated: 9/30/2004



C. Kost
Bankruptcy Specialist
General Motors Acceptance Corporation

Subscribed and sworn to before me on
September 30, 2004


Notary

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re

Case No. 04-35212 DDO

Chapter 7

David Adkins,

Debtor.

MEMORANDUM OF LAW

INTRODUCTION

General Motors Acceptance Corporation, (“GMAC”) has made a motion for relief from the automatic stay. GMAC incorporates herein the facts set forth in the notice of hearing and motion for relief from stay.

There is one loan that is the subject of this motion secured by a security interest in a motor vehicle. The loan is in default for failure to make payments when due. GMAC seeks relief from the automatic stay to foreclose its personal property security interest. There is no equity in the vehicle.

ARGUMENT

Pursuant to 11 U.S.C. § 362(d)(1), a secured creditor may be granted relief from the automatic stay, including lack of adequate protection. The motion, filed by GMAC, for relief from the automatic stay demonstrates cause for relief from the stay for all reasons set forth in the motion. In the aggregate, these circumstances demonstrate cause for relief from the automatic stay. **United Savings Assn. of Texas v. Timbers of Innwood Forest Assoc. Ltd. (In re Timbers of Innwood Assoc. Ltd.)**, 484 U.S. 365 (1988).

Also, there is little or no equity in the vehicle that is the subject of this motion and the vehicle is not necessary for an effective reorganization, which allows the stay to be lifted pursuant to 11 U.S.C. § 362(d)(2). **In re Anderson**, 913 F.2d 530, 532 (8th Cir. 1990).

CONCLUSION

Based on the foregoing, GMAC requests that the Court issue an Order lifting and terminating the automatic stay provided by 11 U.S.C. § 362(a) to permit GMAC to enforce and foreclose its personal property security interest.

DATED: October 6, 2004

RIEZMAN BERGER, P.C.

/s/ Marilyn J. Washburn

Marilyn J. Washburn, #0324140
7700 Bonhomme Ave., 7th Floor
St. Louis, MO 63105
(314) 727-0101
FAX (314) 727-1086
Attorneys for GMAC

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

Case No. 04-35212 DDO

In Re:

Chapter 7

David Adkins,

Debtor.

UNSWORN DECLARATION FOR PROOF OF SERVICE

Marilyn J. Washburn, an attorney licensed to practice law in this court, and employed by Riezman Berger, P.C., with an office address of 7700 Bonhomme Avenue, 7th Floor, St. Louis, Missouri 63105, declares that, on the date listed below, I served a **Notice of Hearing for Relief from Stay, Memorandum of Law and Proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class postage prepaid and depositing same in the post office at St. Louis, Missouri, addressed to each of them as follows:

(Debtor's Attorney)
Barbara J. May
4105 N Lexington, Suite 310
Arden Hills, MN 55126

(Chapter 7 Trustee)
Patti J. Sullivan
P.O. Box 16406
St. Paul, MN 55116

(Debtor)
David Adkins
1220 Mourning Dove Ct.
Eagan, MN 55123

Office of the U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: October 6, 2004.

Signed: /e/ Marilyn J. Washburn

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case No. 04-35212 DDO

Chapter 7

David Adkins,

Debtor.

ORDER

The above entitled matter before the Court for hearing on _____, 2004, on the motion of General Motors Acceptance Corporation, ("GMAC"), seeking relief from the automatic stay of 11 U.S.C. § 362(a). Appearances are as noted in the Court's record.

Based on the proceedings had on said date, the statement of counsel and all the files and records herein, the Court now find that cause exists entitling GMAC to relief from the automatic stay.

NOW, THEREFORE, **IT IS HEREBY ORDERED** that:

1. The automatic stay is immediately terminated as to GMAC and GMAC is authorized to proceed with its legal remedies according to state law as to the subject motor vehicle,

a 2004 Chevrolet Suburban, VIN # 3GNFK16Z64G207484.

2. Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this Order is effective immediately.

DATED at St. Paul, Minnesota, this _____ day of _____, 2004.

BY THE COURT:

Dennis D. O'Brien
United States Bankruptcy Judge